

**THE FAMILY  
COURT IN ACTION**

David Barnard

Butterworths

# The Family Court in Action

David Barnard, BA

of Gray's Inn and of the South-Eastern Circuit, Barrister,  
Lecturer in Civil and Criminal Procedure at the Council of  
Legal Education

London  
Butterworths  
1983

England	Butterworth & Co (Publishers) Ltd, 88 Kingsway, LONDON WC2B 6AB
Australia	Butterworths Pty Ltd, SYDNEY, MELBOURNE, BRISBANE, ADELAIDE and PERTH
Canada	Butterworth & Co (Canada) Ltd, TORONTO Butterworth & Co (Western Canada) Ltd, VANCOUVER
New Zealand	Butterworths of New Zealand Ltd, WELLINGTON
Singapore	Butterworth & Co (Asia) Pte Ltd, SINGAPORE
South Africa	Butterworth Publishers (Pty) Ltd, DURBAN
U.S.A.	Mason Publishing Co, ST PAUL, Minnesota Butterworth Legal Publishers, SEATTLE, Washington; BOSTON, Massachusetts; and AUSTIN, Texas D & S Publishers, CLEARWATER, Florida

© Butterworth & Co (Publishers) Ltd 1983

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

This book is sold subject to the Standard Conditions of Sale of Net Books and may not be resold in the UK below the net price fixed by Butterworths for the book in our current catalogue.

Barnard, David

The family court in action

1. Domestic relations courts—England

2. Police magistrates—England

I. Title

344.2061'5'0269

KD751

ISBN Hardcover 0 406 55650 4

Softcover 0 406 55651 2

Photypeset by Cotswold Typesetting Ltd, Gloucester  
and printed in Great Britain by Billings Bookplan, Worcester

## **The Family Court in Action**

**For my  
Mother and Father**

# Preface

The aim of this book is to provide a readable explanation of the procedure in the courts which exercise jurisdiction over disputes concerning the family. This book is selective; it deals only with those areas of matrimonial work which the practitioner is likely to come across frequently in practice; for that reason the more arcane subjects of family law are either omitted or treated only in outline. It is hoped that this book will be of use to practitioners, students, social workers and anyone else who is interested in understanding the way in which matrimonial disputes are actually decided.

I am grateful to the Senior Registrar for permission to reproduce Divorce Registry Forms. I am also very grateful to the editorial staff of Butterworths who have given me so much assistance in the preparation of this book. The whole of the manuscript has been read by Mrs Mary Burke O.B.E. whose comments and criticisms have been of the greatest help to me. My best thanks, as always, are due to my typist.

David Barnard  
The Temple  
26th September 1983

# Table of statutes

References in this Table to *Statutes* are to Halsbury's Statutes of England (Third Edition) showing the volume and page at which the annotated text of the Act will be found.

PAGE	PAGE
Attachment of Earnings Act 1971 (41 <i>Statutes</i> 791)	Domestic Proceedings and Magistrates' Courts Act 1978— <i>contd</i>
s 6, 14 . . . . . 242	s 12 (3) . . . . . 237
Child Care Act 1980 (50 (1) <i>Statutes</i> 1054)	14 . . . . . 230, 235
s 2 (1), (3) . . . . . 122	14A . . . . . 230
3 . . . . . 123	16 . . . . . 240, 241
(1) . . . . . 123	(1) . . . . . 238
6 . . . . . 124	(2), (3) . . . . . 237
Children Act 1975 (45 <i>Statutes</i> 669):	(6), (8) . . . . . 238
s 3 . . . . . 141	18 (1) . . . . . 238
10 (3) . . . . . 142	(2), (4) . . . . . 239
39 (1) . . . . . 237	25 (2) . . . . . 236
64, 65 . . . . . 126	29 . . . . . 243
Children and Young Persons Act 1933	(1) . . . . . 242
(17 <i>Statutes</i> 435)	30 (1) . . . . . 230
s 34 . . . . . 126, 127	Domestic Violence and Matrimonial Proceedings Act 1976 (46 <i>Statutes</i> 713)
47, 49 . . . . . 127	s 1 . . . . . 63, 66
Children and Young Persons Act 1969	s 1 . . . . . 62
(40 <i>Statutes</i> 843)	2 . . . . . 68
s 1 . . . . . 124, 125, 126, 128	(1) . . . . . 68
(2) . . . . . 125	(3) . . . . . 67
(3) . . . . . 124	Domicile and Matrimonial Procedure Act 1973 (43 <i>Statutes</i> 620)
2 (11) . . . . . 126	s 5 . . . . . 20
(12) . . . . . 129	Sch 1 . . . . . 22
28 . . . . . 125	Family Law Reform Act 1969 (17 <i>Statutes</i> 792, 40 <i>Statutes</i> 614)
(1) . . . . . 125	s 6 (2) . . . . . 133
Civil Evidence Act 1968 (12 <i>Statutes</i> 910)	7 (2), (4) . . . . . 135
Domestic Proceedings and Magistrates' Courts Act 1978 (48 <i>Statutes</i> 730):	20 (1) . . . . . 102
s 1 . . . . . 229, 230	21 (1), (3) . . . . . 102
2 . . . . . 229, 230, 231, 232, 237, 244	23 . . . . . 102
(1) . . . . . 235	Finance Act 1972 (42 <i>Statutes</i> 1931)
6, 7 . . . . . 230	s 75 . . . . . 200
8 . . . . . 230	Finance Act 1974 (44 <i>Statutes</i> 1614)
(2) . . . . . 235, 236	s 19 (2) . . . . . 200
9, 10 . . . . . 235	Guardianship of Minors Act 1971 (41 <i>Statutes</i> 761)
11 . . . . . 230	s 1 . . . . . 131, 136, 140, 230
	s 1 . . . . . 115, 134

	PAGE		PAGE
Guardianship Act 1973 (43 <i>Statutes</i> 643)	131, 136	Matrimonial Causes Act 1973 (43	
s 6(1) . . . . .	237	<i>Statutes</i> 539)	
Income and Corporation Taxes Act		s 1 . . . . .	17
1970 (33 <i>Statutes</i> 17)		(2) . . . . .	22, 55, 188
s 37 . . . . .	200	2 (1) . . . . .	22, 24
52, 65 . . . . .	199	(5) . . . . .	25, 26, 27
Inheritance (Provision for Family and		(6) . . . . .	26, 39
Dependents) Act 1975 (45 <i>Statutes</i>		3 . . . . .	56, 58
493)		4 (2) . . . . .	21
s 2 . . . . .	213, 214	5 (1) . . . . .	22
Land Charges Act 1972 (42 <i>Statutes</i>		9 (2) . . . . .	36
1590) . . . . .	186	10 . . . . .	55
Land Registration Act 1925 (27 <i>Statutes</i>		(2) . . . . .	22, 54, 55, 182, 183
778) . . . . .	186	(3), (4) . . . . .	54
Legal Aid Act 1974 (44 <i>Statutes</i> 126,		22 . . . . .	60
1035)	66	23 . . . . .	60, 190, 205, 208,
s 8 . . . . .	218, 243	209, 219, 220	
(1) . . . . .	217	24 . . . . .	60, 190, 205, 208,
9 (6) . . . . .	210, 219	209, 210, 219, 220	
13 . . . . .	218, 243	25 . . . . .	196
28 (3) . . . . .	126	(1) . . . . .	195, 205, 206
Sch 2 . . . . .	67	28 (3) . . . . .	184
Magistrates' Courts Act 1980 (50 (2)		31 . . . . .	222
<i>Statutes</i> 1433)		34 . . . . .	213
s 51 . . . . .	230	37 (2) . . . . .	186
53 (2) . . . . .	234	41 . . . . .	21, 60, 100, 101
55 . . . . .	230	(1) . . . . .	101, 102
59 (1)–(3) . . . . .	239	(2) . . . . .	100
63 (3) . . . . .	239	47 . . . . .	20
64 . . . . .	237	52 (1) . . . . .	100
66 (1) . . . . .	234	Matrimonial Homes Act 1967 (17	
69, 71 . . . . .	234	<i>Statutes</i> 139) . . . . .	27, 186
72 . . . . .	237	Matrimonial Homes Act 1983	
73 . . . . .	235	s 1 (2) . . . . .	61
77 . . . . .	239	(3) . . . . .	66
93 . . . . .	242	9 . . . . .	62
(5) . . . . .	242	Mental Health Act 1959 (25 <i>Statutes</i> 42):	123
97 . . . . .	242	Solicitors Act 1974 (44 <i>Statutes</i> 1478) .	221
(1) . . . . .	234	Supreme Court Act 1981 (51 <i>Statutes</i>	
Maintenance Orders Act 1958 (17		590) . . . . .	131, 136
<i>Statutes</i> 293)		s 18 (1) . . . . .	120
s 2 . . . . .	239	41 (2) . . . . .	132
(3) . . . . .	239	Supreme Court of Judicature Act 1925	
18 . . . . .	242	(25 <i>Statutes</i> 708)	
Marriage Act 1949 (27 <i>Statutes</i> 1006)		s 47 . . . . .	212
s 65 (3) . . . . .	19		



# List of cases

	PAGE		PAGE
A v A (1979) . . . . .	101	H (infants), Re (1977) . . . . .	142
A v Liverpool City Council (1981). . . . .	139	H v H (1974) . . . . .	114
Andrews v Andrews (1974) . . . . .	42	H v H and C (1969) . . . . .	114
Ansah v Ansah (1977) . . . . .	64, 68	Hanlon v Hanlon (1978) . . . . .	209
Ash v Ash (1972). . . . .	24	Hanlon v Law Society (1981) . . . . .	219
B (a minor), Re (1974). . . . .	139	Hanning v Maitland (No. 2) (1970) . . . . .	218
B v B (1971) . . . . .	119	Hague v Hague (1977). . . . .	42
B v B (1978) . . . . .	194, 195	Hargood v Jenkins (1978). . . . .	183
B v Gloucestershire County Council (1980). . . . .	129	Hillier v Hillier and Latham (1958) . . . . .	57
Baldrian v Baldrian (1974) . . . . .	135	Hopes v Hopes (1949) . . . . .	26
Bassett v Bassett (1975) . . . . .	16, 65	Huxford v Huxford (1972) . . . . .	42, 43
Beals v Beales (1972) . . . . .	27, 33	Hymns v Hymns (1971) . . . . .	33
Bond v Bond (1967). . . . .	235	J v C (1970) . . . . .	115
Boyt v Boyt (1948) . . . . .	111	J v J (1955) . . . . .	192
C v C (1980) . . . . .	56	Jenkins v Hargood (1978). . . . .	183
Calderbank v Calderbank (1976): 217, 218		Jones v Jones (1974) . . . . .	110
Cann v Cann (1977) . . . . .	207	Jussa v Jussa (1972). . . . .	109
Chamberlain v Chamberlain (1974) . . . . .	209	K (an infant), Re (1953) . . . . .	142
Chapman v Chapman (1972) . . . . .	27, 33	Katz v Katz (1972) . . . . .	24
Chaterjee v Chaterjee (1976). . . . .	184	L (an infant), Re (1962) . . . . .	142
Clark v Clark (1970) . . . . .	113	L (minors), Re (1974) . . . . .	138
Collins v Collins (1972) . . . . .	43	L v F (1978) . . . . .	117
Cracknell v Cracknell (1971). . . . .	209	Lanitas v Lanitas (1970) . . . . .	237
Cropper v Smith (1884) . . . . .	46	Lazarus (Leopold) Ltd v Secretary of State for Trade and Industry (1976): 220	
Day v Day (1980) . . . . .	33, 42	Leake v Bruzzi (1974) . . . . .	209
Dipper v Dipper (1981) . . . . .	109	Lewis v Lewis (1978) . . . . .	68
Doherty v Doherty (1976). . . . .	181, 184	Lewisham London Borough Council v Lewisham Juvenile Court Justices (1980) . . . . .	123
Dunford v Dunford (1980) . . . . .	209	Livingstone-Stallard v Livingstone- Stallard (1974). . . . .	24
Eastwood, Re, Lloyds Bank Ltd v Eastwood (1973) . . . . .	220	Lyon v Lyon (1953). . . . .	221
F (a minor), Re (1976) . . . . .	121	M & M (1973) . . . . .	119
Fay v Fay (1982). . . . .	57	McCartney v McCartney (1981) . . . . .	235
Francis v Francis & Dickerson (1956): 221		McDonnell v McDonnell (1977): 217, 218	
Fuller v Fuller (1973) . . . . .	26, 39	Marjoram v Marjoram (1955) . . . . .	235
G v P (1978) . . . . .	223	Marsden v Marsden (1973) . . . . .	184
Grenfell v Grenfell (1978). . . . .	43, 46	Martin v Martin (1978) . . . . .	208, 209, 210
Guerrera v Guerrera (1974) . . . . .	224	Mesher v Mesher and Hall (1980) . . . . .	209

	PAGE		PAGE
Minton v Minton (1977) . . . . .	214	Rasool v West Midlands Passenger Transport Executive (1974) . . . . .	52
Morgan v Morgan (1977) . . . . .	197	Richards v Richards [1983] 3 WLR 173	62, 66
Mouncer v Mouncer (1972) . . . . .	26	Russell v A-G (1949) . . . . .	20
Nast v Nast and Walker (1972) . . . . .	49	S (infants), Re (1967) . . . . .	133
Nelson v Nelson and Slinger (1958) . . . . .	46	S (infants), Re (1977) . . . . .	142
O (infants), Re (1971) . . . . .	121	S v S (1972) . . . . .	102
O'Donnell v O'Donnell (1975) . . . . .	193	S v S (1976) . . . . .	208
Official Solicitor v K (1965) . . . . .	133, 134, 135	S (BD) v S (DJ) (1977) . . . . .	115
P (LM) v P (GE) (1970) . . . . .	117	S v S (1978) . . . . .	218
Pardy v Pardy (1939) . . . . .	25	Santos v Santos (1972) . . . . .	25
Payne v Payne (1968) . . . . .	192	Smethurst v Smethurst (1978) . . . . .	207
Practice Direction (1971) . . . . .	47	Smith v Smith (1976) . . . . .	208
Practice Direction (1972) . . . . .	211	Spill v Spill (1972) . . . . .	43
Practice Direction (1973) . . . . .	30, 138	Spindlow v Spindlow (1979) . . . . .	62, 136
Practice Direction (1975) . . . . .	21	Turner v Turner (1978) . . . . .	67
Practice Direction [1977] 2 All ER 543: . . . . .	243	V (a minor), Re (1979) . . . . .	136
Practice Direction [1977] 3 All ER 122: . . . . .	137	W (an infant), Re (1971) . . . . .	142
Practice Direction [1979] 1 All ER 112: . . . . .	49	W v A (1981) . . . . .	117
Practice Direction [1979] 1 All ER 813: . . . . .	223	W (RJ) v W (SJ) (1972) . . . . .	100
Practice Direction [1979] 2 All ER 45: . . . . .	28	Wachtel v Wachtel (1973)	206, 207, 208, 209
Practice Direction [1979] 2 All ER 1106	30, 138	Waters v Waters (1956) . . . . .	235
Practice Direction [1980] 1 All ER 784: . . . . .	109	Wheatley v Waltham Forest London Borough Council (1980). . . . .	123
Practice Direction [1980] 2 All ER 806: . . . . .	138	X (a minor), Re (1975) . . . . .	135
Practice Direction [1980] 3 All ER 832: . . . . .	200	Zacharia v Republic of Cyprus (1963): . . . . .	33
Practice Direction (1981) . . . . .	111, 112		
Practice Direction (1982) . . . . .	217		
Practice Note (1973) . . . . .	113		
Practice Note (1978) . . . . .	66		
Purse v Purse (1981) . . . . .	30		
Ramsbotham v Senior (1869) . . . . .	138		

# The Scheme of The Book

This book is divided into five sections:

1. *Divorce and separation.* In this section we shall consider how a marriage can be terminated by divorce and how the courts decide the difficult question of who should live in the home while the proceedings are continuing.
2. *Children.* This section deals with two main problems: who is to look after the children once the parties are separated and, secondly, how can the other parent's desire to maintain contact with his children be protected? We shall consider the problem of children who for one reason or another need to be looked after by local authorities. We shall also look at the way in which the court can itself assume parental responsibility by making children 'wards of court'. Finally, we shall consider how parental rights can be extinguished and new rights created by adoption.
3. *Financial provision.* In this section we shall be concerned with the procedures by which the court investigates the financial position of the parties in order to determine the capital and income provision which should be made for the wife and children after divorce.
4. *The domestic court.* This section explains the procedure whereby magistrates' courts can provide quick and effective decisions to protect the wife and children after separation and before divorce proceedings are begun. We shall also consider how these courts are used as collecting agencies to ensure maintenance orders are obeyed.
5. *The sources.* We conclude with an appendix setting out the text of the principal statutory provisions and rules which we have considered.

Each of the first three sections begins with a narrative account of an imaginary case; the purpose of these stories is to introduce the reader to the basic documents used in family court proceedings and to show how the procedure we discuss in theory in the text appears in real life.

It is important for the reader to bear in mind the scheme under which the family courts operate. We shall be considering three different courts:

- (i) *Divorce County Courts.* All divorce cases begin in a county court. In London, the Divorce Registry in Somerset House operates as a central divorce county court. These courts are staffed by Circuit Judges and by Registrars.
- (ii) *The High Court.* When a divorce case becomes defended the suit is transferred to the High Court to be determined by a High Court Judge. Complicated cases concerning children, wardship proceedings and

property cases involving disputes as to conduct or large sums of money are also heard in the High Court. The High Court sits at the Royal Courts of Justice in the Strand in London and at buildings shared with the Crown Court in the provinces. Procedural applications in the High Court are decided by Registrars at Somerset House or by District Registrars out of London.

- (iii) *Domestic courts.* These courts are staffed by magistrates sitting with qualified court clerks. The courts sit all over the country in the same buildings as the local magistrates' courts (which deal with criminal cases). We shall also be concerned with *Juvenile Courts* which are similarly staffed by magistrates assisted by qualified clerks.

Part one

---

# Divorce and separation

# Contents

Preface	v
Table of statutes	ix
List of cases	xi
The scheme of the book	xiii

## PART ONE. DIVORCE AND SEPARATION

The case of <i>Sikes v Sikes</i>	1
Chapter 1 Undefended divorce	17
Appendix to chapter 1	37
Chapter 2 Defended suits	40
Chapter 3 Separation in the first three years	56
Chapter 4 Exclusion injunctions	61

## PART TWO. CHILDREN

<i>Re David Copperfield</i> , a minor	71
Chapter 1 Children of the family	100
Chapter 2 Custody and access	109
Chapter 3 Children in care	122
Chapter 4 Wardship	130
Chapter 5 Adoption	140

## PART THREE. FINANCE

<i>Sikes v Sikes</i> (continued)	
Chapter 1 Applications for ancillary relief	181
Chapter 2 Application for maintenance pending suite and interim child maintenance	188
Chapter 3 Disclosure	190
Chapter 4 Tax and maintenance payments	198
Chapter 5 Preparing the case for hearing	204
Chapter 6 The hearing	211

## PART FOUR. THE DOMESTIC COURT

Chapter 1 The Domestic Court	229
Appendix Matrimonial Causes Rules 1977 (as amended)	247
Index	277

# The Case of Sikes v Sikes

Mr Dodson is a solicitor in a firm in the centre of London. Although his practice involves mainly commercial and insurance work, he also undertakes legal aid cases. Late one afternoon in August, Mr Dodson received a telephone call from the Social Services in Uxbridge. They had with them a very distressed and tearful client – a Mrs Sikes. It appeared her family had employed Mr Dodson's firm in the past and she wanted an urgent appointment to see him about her matrimonial problems. Mr Dodson was able to give her an appointment for the very next morning.

Mrs Sikes turned up next day a little late. She told Mr Dodson that she had been married for twelve years and had two children a boy aged six and a girl of three. Recently her husband (who had always been a heavy drinker) had started knocking her about. Things had gone from bad to worse and on the previous Saturday, after he had been particularly violent, she had left home taking the children with her. She had gone to stay with her mother and father in Uxbridge but the arrangements were not very satisfactory because her parents had only two bedrooms and she had to take the boy across West London to Ealing every day so that he did not miss school. Her husband, she said, was now alone in a big house with three bedrooms.

Mr Dodson explained that he was able to give Mrs Sikes *advice* under the Green Form Scheme and his firm would be paid for that advice by the Legal Aid Fund. Mrs Sikes however now had to apply to the court and for that purpose she would need a Legal Aid Certificate. This would authorise him to prepare an application for an order requiring Mr Sikes to leave the house and enable him to instruct counsel to attend the court at the hearing of the application. Mrs Sikes there and then completed the appropriate forms.

When Mrs Sikes had left the offices, Mr Dodson dictated a divorce petition and drafted an application for an ouster injunction and an affidavit setting out his client's case. (These are to be found in counsel's brief at pp. 4 and 6 *infra*.) The next day Mrs Sikes came back to the office and then accompanied Mr Dodson's clerk to the Divorce Registry at Somerset House in the Strand where she swore to the facts set out in her affidavit (the details of the oath – called 'the jurat' – are to be found at the bottom of the affidavit). Mr Dodson's assistant, Mr Guppy, then handed over to the clerk in the court office (a) two copies of the petition (b) two copies of a completed form setting out the arrangements proposed for the children (c) a certificate from Mr Dodson that he had *not* discussed with Mrs Sikes the possibility of a reconciliation between her and her husband (d) a copy of her marriage certificate and (e) a certificate to the effect she was receiving advice under

the Legal Aid Scheme and so was exempt from paying the £40 petition fee. The court clerk entered details of the petition in the cause book kept at the registry and (because Mr Dodson proposed effecting personal service on Mr Sikes) handed over to Mr Guppy a copy of the petition duly sealed with the court stamp together with a form entitled 'Notice of Proceedings', an Acknowledgment of Service form and a copy of the Statement of Arrangements. The notice of proceedings is an explanation for the respondent of the steps he should take.

Mr Dodson had told his assistant that he proposed to apply to the court for an injunction ordering Mr Sikes out of the house. Mr Guppy therefore had to issue an Originating Summons (see p. 6 post) which would be served on Mr Sikes telling him of the date and time when Mrs Sikes would apply to the court for an order for his eviction. At the same time he issued a Notice of Application for Interim Custody.

Late that evening Mr Guppy went to the Sikes home in Ealing; he was of course apprehensive. He was armed with the divorce papers, the summons for the injunction hearing and a copy of the affidavit Mrs Sikes had sworn. He also had a photograph of Mr Sikes – which had increased his apprehension. When he knocked on the door, Mr Sikes opened it. He told Mr Guppy he had been expecting his wife to take some steps and he had already instructed solicitors. He intended to pass on the papers to them next morning.

Three days went by and nothing more was heard; if Mr Guppy had had the presence of mind to inquire the name of Mr Sikes' solicitors, his principal would have telephoned them to see whether there was any chance of agreement. On the Friday an affidavit arrived in the post (the affidavit is set out at p. 10 in counsel's brief). Its contents did not come as a great surprise to Mr Dodson. In a nutshell Mr Sikes' case was that he had only twice been violent to his wife and those occasions were after he had found out that she was associating with another man. It seemed clear there would be a real contest over the injunction proceedings. On the next pages are set out extracts from the brief to counsel instructed to make the application. Study these carefully and then read the transcript of the hearing. Note that the divorce proceedings are being heard in the High Court because Mr Sikes has filed an answer to the petition. Undefended divorce cases proceed in the county court (or Divorce Registry in London); defended divorce cases proceed in the High Court.



In the Divorce Registry

No 2061 of 1983

Between:

NANCY SIKES Petitioner

and

WILLIAM SIKES Respondent

---

Brief to Counsel for Petitioner

---

Counsel has herewith:

1. Copy Petition
2. Acknowledgment of Service
3. Proposed Answer
4. Originating Summons
5. Affidavit of Petitioner
6. Affidavit of Respondent
7. Legal Aid Certificate.
8. Notice of Custody Application

In this case the parties were married in 1970 and there are two children aged six and three. There is a history of violence in this marriage and on 23rd July our client left the matrimonial home after she had been abused and knocked about by the Respondent. We would respectfully draw counsel's attention to the allegations set out in paragraphs 3-5 of the Respondent's affidavit. Our client has not contacted us despite messages left with her parents so we can only hope that she will be able to give detailed instructions on these matters at court. She has been told to attend not later than 10 o'clock.

Counsel is instructed  
to apply for an  
injunction on behalf of  
the Petitioner.